

Electronically filed on May 16, 2011

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11 *Counsel for Timothy L. Blixseth*

12 **UNITED STATES BANKRUPTCY COURT**

13 **DISTRICT OF NEVADA**

14 In re

15 TIMOTHY L. BLIXSETH,

16  
17 Alleged Debtor.

Case No. BK-S-11-15010-BAM

Chapter 7 (Involuntary)

18 **DECLARATION OF LUIS A. AYON**  
19 **IN SUPPORT OF TIMOTHY L.**  
20 **BLIXSETH'S RESPONSE TO MONTANA**  
21 **DEPARTMENT OF REVENUE'S**  
22 **OBJECTION TO EXHIBITS**

Hearing Date: May 18, 2011

Hearing Time: 1:30 p.m.

23 I, Luis A. Ayon, being duly sworn, hereby depose and declare under penalty of perjury:

24 1. I am over the age of 18, am mentally competent, and if called upon to testify as to the  
25 statements made herein, could and would do so. I make this declaration in support of Timothy L.  
26 Blixseth's Response to Montana Department of Revenue's Objection to Exhibits.

27 2. I am an attorney at law and member of the law firm of Fox Rothschild LLP.

28 3. I have personal knowledge of the facts stated herein.

1           4.       On May 11, 2011, MDOR served on Fox Rothschild and Mr. Blixseth its Submission of  
2 List of Declarations and Witnesses. The Submission began as follows: "Pursuant to LR 9017(d),  
3 Petitioning Creditor Montana Department of Revenue ("MDOR"), respondent with respect to the  
4 alleged debtor's motion to dismiss and motion for sanctions, to be heard on May 18, 2011, and  
5 respondent with respect to the Court's order to show cause issued on April 8, 2011, hereby submits its  
6 list of declarations and exhibits for said hearing . . . ." A true and correct copy of MDOR's May 11,  
7 2011 submission is attached hereto as **Exhibit 1**. Mr. Blixseth thereby understood MDOR to be  
8 suggesting and agreeing to LR 9017's Use of Alternate Direct Testimony and Exhibits, whereby  
9 declarations and exhibits are substituted for direct testimony.

10           5.       On May 12, 2011, I left message for both Rodney Jean and Lynn Butler to discuss the  
11 stipulation referenced in LR 9017 to use declarations in lieu of live testimony and to discuss submitting  
12 a joint exhibit list for the May 18, 2011 Court hearing. Later that day, I sent an email to Rodney Jean  
13 and Lynn Butler inquiring as to whom I should be discussing these matters. A true and correct copy of  
14 the email to Rodney Jean and Lynn Butler is attached hereto as **Exhibit 2**.

15           6.       On May 13, 2011, Rodney Jean and I discussed having a joint stipulation for the exhibits  
16 to be used for the May 18, 2011 Court hearing and also discussed entering into a LR 9017 stipulation to  
17 allow Blixseth to use alternative direct testimony.

18           7.       During that conversation, Mr. Jean stated that MDOR would be using only live  
19 testimony and would not be presenting any testimony by declaration. Nonetheless, I informed Mr. Jean  
20 of Mr. Blixseth's intention to use declarations in lieu of live testimony. Mr. Jean said he would get  
21 back to me regarding whether he was willing to enter into a stipulation saying so.

22           8.       On May 16, 2011, I called Mr. Jean to follow up on both the 9017 stipulation to allow  
23 Mr. Blixseth to use his declaration for direct testimony and to use a joint exhibit list. During that  
24 conversation, Mr. Jean stated that he would not stipulate to allow Mr. Blixseth to use declarations in  
25 lieu of live testimony, nor would he agree to use a joint exhibit list for the May 18, 2011 court hearing.

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
2 and correct to the best of my knowledge, information and belief.

3 Executed this 16th day of May, 2011.

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5 s/Luis A. Ayon

6 LUIS A. AYON  
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# EXHIBIT 1

# EXHIBIT 1

Rodney M. Jean  
NV State Bar No. 1395  
Lionel Sawyer & Collins  
300 S. 4<sup>th</sup> St., #1700  
Las Vegas, Nevada 89101  
(702) 383-8830  
(702) 383-8845 (fax)  
rjean@lionelsawyer.com

Lynn Hamilton Butler  
TX State Bar No. 03527350  
BROWN MCCARROLL, L.L.P.  
111 Congress Avenue, Suite 1400  
Austin, Texas 78701  
(512) 472-5456  
(512) 479-1101 (fax)  
[lbutler@brownmccarroll.com](mailto:lbutler@brownmccarroll.com)

Pro Hac Vice Application Approved

Keith A. Jones  
Special Assistant Attorney General  
Montana Department of Revenue, Legal Services Office  
125 North Roberts Street  
P.O. Box 7701  
Helena, MT 59604-7701  
(406) 444-5884  
kjones@mt.gov

Pro Hac Vice Application Approved

COUNSEL FOR PETITIONING CREDITOR MONTANA DEPARTMENT OF REVENUE

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:	§	Case No.: BK-S-11-15010-BAM
	§	
TIMOTHY L. BLIXSETH,	§	Involuntary Chapter 7
	§	
Alleged Debtor.	§	
	§	Date: May 18, 2011
	§	Time: 1:30 p.m.
	§	Courtroom: 3
	§	

**Respondent/Petitioning Creditor Montana Department of Revenue's List of  
Declarations and Exhibits**

Pursuant to LR 9017(d), Petitioning Creditor Montana Department of Revenue ("MDOR"), respondent with respect to the alleged debtor's motion to dismiss and motion for sanctions, to be heard on May 18, 2011, and respondent with respect to the Court's order to show cause issued on April 8, 2011, hereby submits its list of declarations and exhibits for said hearing attached hereto as Exhibit A. (Copies of items on this Court's docket are not attached, but will be provided if requested by the alleged debtor or any creditors.) Copies of exhibits and declarations which are not docketed are (i) highlighted in bold print and (ii) attached hereto and identified by the exhibit number specified in Exhibit A.

The following witnesses will be available to present live testimony at the hearing:

Peter Donnelly, Compliance Unit Manager, MDOR  
P.O. Box 5805  
Helena, MT 59604

Kim Davis, Bankruptcy Unit Specialist, MDOR  
P.O. Box 7701  
Helena, MT 59604

The court reporter for the deposition of Spencer Tishta-Marks taken May 10, 2011 has to date provided only a rough draft of the transcript without exhibits. A final transcript will be submitted in its place as soon as it is received from the court reporter.

Respectfully submitted this 11<sup>th</sup> day of May, 2011.

/s/ Lynn Hamilton Butler  
LYNN HAMILTON BUTLER  
BROWN MCCARROLL, L.L.P.  
111 Congress Avenue, Suite 1400  
Austin, Texas 78701  
Phone: (512) 479-1141  
Email: [lbutler@mailbmc.com](mailto:lbutler@mailbmc.com)  
Texas Bar No. 03527350

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/s/ Keith A. Jones  
KEITH A. JONES  
Special Assistant Attorney General  
MONTANA DEPARTMENT OF REVENUE  
Legal Services Office  
125 North Roberts Street  
P. O. Box 7701  
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Email: [kjones@mt.gov](mailto:kjones@mt.gov)

and

/s/ Rodney Jean  
RODNEY JEAN  
LIONEL SAWYER & COLLINS  
300 S. 4<sup>th</sup> Street, #1700  
Las Vegas, NV 89101  
(702) 383-8888  
Email: [rjean@lionelsawyer.com](mailto:rjean@lionelsawyer.com)

COUNSEL FOR PETITIONING CREDITOR  
MONTANA DEPARTMENT OF REVENUE

**EXHIBIT A**  
**LIST OF EXHIBITS AND DECLARATIONS**

A. Tax / Claim Documents.

1. Settlement Agreement between California Franchise Tax Board and Tim Blixseth dated April 18, 2011 (Dkt. #32, Ex. 1, #56, Ex. 1)
2. State of Idaho - Notice of Idaho Tax Lien (T 404958) (Dkt. #73, Ex. 3)
3. State of Idaho - Notice of Idaho Tax Lien (T 412169) (Dkt. #73, Ex. 3)
4. State of Idaho - Notice of Idaho Tax Lien (T 459882) (Dkt. #73, Ex. 3)
5. Idaho State Court - Default Judgment (Dkt. #73, Ex. 3)
6. Settlement Agreement between Idaho State Tax Commission and Tim Blixseth dated April 19, 2011 (Dkt. #32, Ex. 2, #56, Ex. 2)
7. Internal Revenue Service - Notice of Tax Lien (Dkt. #73, Ex. 4)
8. Bankruptcy Ct. (D. Mont.) - Amended Judgment dated September 7, 2010 (Dkt. #73, Ex. 6)
9. Bankruptcy Ct. (D. Mont.) - Memorandum of Decision dated February 25, 2011 (Dkt. #27, Ex. 13)
10. Complaint before Montana's State Tax Appeals Board (STAB) dated February 10, 2011 (Dkt. #27, Ex. 7; Dkt. #73, Ex. 5) (Marks Deposition, Ex. 1)
- 11. Timothy Blixseth's Response To Administrative Hearing Status Questionnaire (re. State Tax Appeal Board Complaint) dated February 12, 2012 [sic] (Marks Deposition, Ex. 4)**
- 12. Letter from MDOR to Timothy Blixseth, with Statement of Account, dated January 7, 2010 (Marks Deposition, Ex. 9)**
- 13. Audit Assessment Letter from MDOR to Timothy Blixseth dated July 27, 2009**
- 14. Letter from MDOR to Timothy Blixseth dated March 3, 2010 (Marks Deposition, Ex. 5)**
- 15. Tax Return for 2004 for Timothy and Edra Blixseth (Marks Deposition, Ex. 6)**
- 16. Stipulation dated January 14, 2011 by MDOR and Timothy Blixseth (Marks Deposition, Ex. 7)**
- 17. 2004 Montana-CLT4S form, Schedule 1, for Blixseth Group, Inc. (Marks Deposition, Ex. 8)**
- 18. Consent Decree dated December 29, 2004 (Marks Deposition, Ex. 2)**

B. Declarations / Testimony.

- 19. Declaration of Kim Davis dated May 11, 2011**
20. Declaration of Shawn Murrell dated April 18, 2011 (Dkt. #73, Ex. 1)
21. Declaration of Timothy Blixseth dated April 20, 2011 (Dkt. #27)
22. Supplemental Declaration of Timothy Blixseth dated April 21, 2011 (Dkt. #32)
23. Omnibus Declaration of Timothy Blixseth dated April 27, 2011 (Dkt. #56)
24. Supplemental Omnibus Declaration of Timothy Blixseth dated May 4, 2011 (Dkt. #71)
25. Transcript of Deposition Testimony of Timothy Blixseth, taken January 26, 2010 (Dkt. #56, Ex. 15)
26. Declaration of Spencer Tishta-Marks dated May 4, 2011 (Dkt. #75) (Marks Deposition, Ex. 3)



1           **27. Rough Draft of Transcript of Deposition Testimony of Spencer Tishta-Marks, taken**  
2           **May 10, 2011**

3           C. Nevada LLC and LLLP Documents.

4           28. Desert Ranch Management LLC: Nevada Secretary of State abstract (Dkt. #87, Ex. 1)

5           **29. Desert Ranch LLLP: Nevada Secretary of State abstract**

6           30. Desert Ranch LLLP: Certificate of Limited Partnership filed May 10, 2007 (Dkt. #71,  
7           Ex. 2)

8           31. Desert Ranch LLLP: Limited Liability Partnership Agreement dated November 1, 2008  
9           (Dkt. #71, Ex. 1)

10          32. Desert Ranch LLLP: Certificate of Registration filed November 12, 2008 (Dkt. #71, Ex.  
11          3)

12          D. Miscellaneous.

13          33. King County Dept. of Assessments search (Dkt. #17, Ex. 7)

14          34. Kalish L.L.C.: Washington Secretary of State abstract (Dkt. #17, Ex. 8)

# EXHIBIT 2

# EXHIBIT 2

**From:** [Rodney Jean](#)  
**To:** [Ayon, Luis A.](#)  
**Cc:** [LButler@brownmccarroll.com](mailto:LButler@brownmccarroll.com); [kjones@mt.gov](mailto:kjones@mt.gov); [Mark Gardberg](#)  
**Subject:** RE: Spam: Blixseth - May 18th Hearing  
**Date:** Friday, May 13, 2011 9:04:42 AM

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Sorry, I was out yesterday. You can run exhibit questions by me. Your voicemail message mentioned that you had produced your exhibit list. I am having difficulty locating it. Can you resend by email?

**Rodney Jean**

**Lionel Sawyer & Collins**

**300 S. 4th Street #1700**

**Las Vegas, NV 89101**

**Main - 702-383-8888**

**Direct - 702-383-8830**

**Fax - 702-383-8845**

**Mobile - 702-308-6569**

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**From:** Ayon, Luis A. [mailto:[LAyon@foxrothschild.com](mailto:LAyon@foxrothschild.com)]  
**Sent:** Thursday, May 12, 2011 3:57 PM  
**To:** Rodney Jean  
**Cc:** Axelrod, Brett A.; Axelrod, Charles D.; Craig, Aaron  
**Subject:** Spam: Blixseth - May 18th Hearing

Rod:

I left a message earlier today with respect to the Blixseth hearing on the 18th. We would like to enter into a stipulation with your client on a joint exhibit list for the hearing. Please let us know if we should run that stipulation by you or Lynn Butler? Thank you.

Regards,

Luis

**Luis A. Ayon**

Litigation Associate | Licensed in Nevada and Arizona

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